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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

PETER MARINAKIS,

Plaintiff and Appellant,

v.

AMAL DIAS et al.,

Defendants and Respondents.

A146458

(Contra Costa County
Super. Ct. No. C12-02710)

To settle their commercial lease dispute, defendants Amal Dias and Shamila Weerakkody agreed to pay \$10,000 to plaintiff Peter Marinakis. The parties squabbled over whether defendants paid all they owed or were \$500 short. Marinakis sought to enforce the judgment, seeking not only the alleged \$500 shortfall, but also a \$5,000 “default amount.” Even assuming the settlement agreement provided for such a penalty, we agree with the trial court that the penalty could not be enforced because it would be unreasonably disproportionate to the amount at issue, violating Civil Code section 1671.

BACKGROUND

Marinakis and defendants mediated their commercial lease dispute and signed a “Confirmation of Settlement.” Defendants would pay Marinakis \$10,000 as follows: \$1,000 up front, then \$500 a month for 18 months. Defendants would be in breach if they received written notice of nonpayment and failed to make payment within five days. A request for dismissal would be filed within 14 days of final settlement payment. The confirmation also stated “Attorneys to prepare Stipulated Judgment with default amount

set at \$15,000.” Both sides filed notices of settlement of the entire case but asked the court to retain jurisdiction for 18 months to enforce the settlement. There is no evidence a stipulated judgment was ever prepared or filed.

Defendants paid the initial \$1,000, made five monthly payments of \$500, and then paid a lump sum of \$6,000, writing “last payment for settlement” on the check. These payments, totaling \$9,500, fell \$500 short of the specified settlement amount. A year after the lump sum payment, in the 18th month, Marinakis demanded the final \$500 payment and told defendants their failure to pay within five days would breach the settlement agreement.

Defendants insisted the full \$10,000 had been paid, asked Marinakis to hold off on a motion to enforce for 14 days so the parties could each review their records, and threatened a breach of contract action based on Marinakis’s failure to file a request for dismissal. The rhetoric escalated and became, in the trial court’s apposite words, “nasty.”

Marinakis filed his motion to enforce, seeking not only his late payment of \$500, but also \$5,000 as a “default amount.” After the motion was filed, defendants sent Marinakis \$567.50 to cover the missing \$500 payment, interest, and the \$60 fee Marinakis had to pay to file his motion to enforce.

The trial court found the clause stating the attorneys would “prepare Stipulated Judgment with default amount set at \$15,000” to be ambiguous as to what would constitute a default. In any event, the court viewed the \$5,000 “default amount” as bearing no reasonable relationship to the \$500 unpaid balance, and so decided imposing it on defendants would violate Civil Code section 1671’s limit on liquidated damages provisions in contracts. Although not imposing the \$5,000 default amount, the trial court did award Marinakis \$2,060 for attorney fees and costs related to the otherwise meritorious motion to enforce settlement.

Marinakis appeals, seeking the \$5,000 default amount he sought below.

DISCUSSION

Putting aside the Confirmation of Settlement's problematic vagueness, even if it provided for a \$5,000 default amount, it would be unenforceable.

“Under Civil Code section 1671, ‘a provision in a contract liquidating the damages for the breach of the contract is valid unless the party seeking to invalidate the provision establishes that the provision was unreasonable under the circumstances existing at the time the contract was made.’ (Civ. Code, § 1671, subd. (b).) The California Supreme Court has held that a ‘liquidated damages clause will generally be considered unreasonable, and hence unenforceable under [Civil Code] section 1671 [, subdivision] (b), if it bears no reasonable relationship to the range of actual damages that the parties could have anticipated would flow from a breach.’ [Citation.] ‘The amount set as liquidated damages “must represent the result of a reasonable endeavor by the parties to estimate a fair average compensation for any loss that may be sustained.” [Citation.] In the absence of such relationship, a contractual clause purporting to predetermine damages “must be construed as a penalty.” ’ [Citation.] ‘Whether an amount to be paid upon breach is to be treated as liquidated damages or as an unenforceable penalty is a question of law.’ ” (*Jade Fashion & Co., Inc. v. Harkham Industries, Inc.* (2014) 229 Cal.App.4th 635, 646, citing *Ridgley v. Topa Thrift & Loan Assn.* (1998) 17 Cal.4th 970, 977 [“charges for late payment of loan installments have been held unenforceable where they bore no reasonable relationship to the injury the creditor might suffer from such late payments”].)

Several cases discuss the enforceability of settlement agreement terms that call for entry of a stipulated judgment following one party's default in payment obligations. (See *Sybron Corp. v. Clark Hosp. Supply Corp.* (1978) 76 Cal.App.3d 896 (*Sybron*); *Greentree Financial Group, Inc. v. Execute Sports, Inc.* (2008) 163 Cal.App.4th 495; *Purcell v. Schweitzer* (2014) 224 Cal.App.4th 969 (*Purcell*).

“In *Sybron*, . . . [t]he parties reached a settlement under which the buyers would pay the seller \$72,000 plus interest in 12 monthly installments; if the buyers defaulted on any payment, a stipulated judgment for \$100,000 could be entered in the seller's favor. After paying \$42,000, the buyers became delinquent and the seller obtained a stipulated judgment of \$100,000. (*Sybron*, *supra*, 76 Cal.App.3d at pp. 898-899.) The Court of Appeal held that the stipulated judgment was an unenforceable penalty and forfeiture because it bore ‘no reasonable relationship to actual damages suffered by [the seller] as the result of delay but to the contrary appears grossly disproportionate in amount.’ (*Id.* at p. 903.) As the court explained, a ‘creditor is entitled to bargain that if the installment debtor imposes upon the creditor by a continuing course of dilatory payment the creditor may accelerate and collect the entire obligation, plus a reasonable amount to compensate for delay. On the other hand, the equitable powers of the court exist to insure that the ultimate obligation imposed on the debtor is not unreasonable in proportion to the original obligation and the seriousness of the default.’ (*Ibid.*) The court reasoned that enforcement of the default provision ‘would result in a \$28,000 penalty for delay in payment of \$30,000, a penalty which bears no rational relationship to the amount of actual damages suffered.’ (*Ibid.*)” (*Jade Fashion & Co., Inc. v. Harkham Industries*, *supra*, 229 Cal.App.4th at pp. 646-647, italics omitted.)¹

In *Purcell*, a stipulation “allow[ing] for entry of judgment in the amount of almost \$60,000 was likewise an unenforceable penalty because the underlying settlement was for \$38,000. The stipulation bore no reasonable relationship to the damages that it could be expected that *Purcell* would suffer as a result of a breach by *Schweitzer*. This is shown

¹ *Sybron*, *supra*, 76 Cal.App.3d 896 involved an older version of Civil Code section 1671 that was more hostile to liquidated damages provisions, but the relevant portion of “*Sybron*’s decision makes sense under either version of” the statute. (*In re VEC Farms, LLC* (Bankr. N.D. Cal. 2008) 395 B.R. 674, 689 [considering this very question]; *Greentree Financial Group, Inc.*, *supra*, 163 Cal.App.4th at p. 497 [reaffirming *Sybron* “continues to apply after the intervening amendment to Civil Code section 1671”].)

by the payment plan itself, which provided that Schweitzer would make payments of \$750 per month.” (*Purcell, supra*, 224 Cal.App.4th at pp. 975-976.)

Without hesitation, we agree with the trial court that the \$5,000 “default amount” Marinakis sought as a sanction for nonpayment or late payment bore no reasonable relationship to the \$500 at issue, or even the \$10,000 total settlement value. We see no basis on which to distinguish this case from *Sybron* or *Purcell*. The trial court crafted an eminently reasonable solution in the face of two obstinate, uncooperative parties who should have resolved what had become a straightforward \$500 dispute without taxing the judicial system.

DISPOSITION

The judgment is affirmed.

Banke, J.

We concur:

Humes, P. J.

Dondero, J.